



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Central Regional Office, 627 Main Street, Worcester, MA 01608

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Governor

ELLEN ROY HERZFELDER
Secretary

KERRY HEALEY
Lieutenant Governor

ROBERT W. GOLLEDGE Jr.
Commissioner

URGENT LEGAL MATTER: PROMPT ACTION NECESSARY

Browning Ferris Industries, Inc.
1 Hardscrabble Rd.
Auburn, MA 01501

RE: CRWSC - Northbridge
Roadway Release
355 Main St.

ATTN: Chris Macera,
General Manager

Release Tracking Number: 2-15225

NOTICE OF RESPONSIBILITY
M.G.L. c. 21E, 310 CMR 40.0000

Dear Mr. Macera:

The Department of Environmental Protection (the Department) was notified on April 26, 2004, at 1:38 p.m., that a sudden release of twenty (20) gallons of hydraulic oil occurred at the above-referenced property. Specifically, the release occurred as the result of a ruptured hydraulic line on a trash truck. The above-mentioned amount of hydraulic oil impacted the paved roadway surface and a nearby catch basin. Such condition required oral notification to the Department within 2-hours and performance of an Immediate Response Action (IRA). In light of the notification and other information available, the Department wishes to ensure that you are aware of your rights and responsibilities under the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E, and the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000.

The Department has identified the property, or portions thereof, as a disposal site that requires the conduct of cleanup or other response actions. The cleanup of disposal sites is governed by Chapter 21E and the MCP. The Department has assigned Release Tracking Number (RTN): 2-15225 to this disposal site for the release notification received.

The Department also has reason to believe that you (as used in this Notice, "you" refers to Browning Ferris Industries, Inc.) are a party with potential liability for response action costs and damages under Chapter 21E, § 5.

The attached summary is intended to provide you with information about liability under Chapter 21E to assist you in deciding what actions to take in response to this Notice.



You should be aware that you might have claims against third parties for damages, including claims for contribution or reimbursement for the costs of cleanup. Such claims do not exist indefinitely but are governed by laws that establish the time allowed for bringing litigation. The Department encourages you to take any action necessary to protect any such claims you may have against third parties.

IMMEDIATE RESPONSE ACTIONS

Information on file with the Department indicates that the following response actions have been performed prior to notification at this disposal site:

- The driver of the truck spread speedi-dri on the roadway surface in an effort to contain the release.

On April 26, 2004 at 1:38 p.m. "you" agreed to take the required IRA.

On April 26, 2004, the Department gave you oral approval to conduct the IRA you proposed to initiate a timely response to this release. The Department's oral IRA approval included the following:

- Remove oil from impacted catch basins, and clean out the impacted catch basins as needed;
- Install absorbent boom at the discharge of the storm drainage system as a precaution; and
- Remove and properly dispose of all contaminated remediation debris associated with this release.

You must dispose of any Remediation Waste as defined by the MCP, including, without limitation, contaminated soil and/or debris, generated at the location in accordance with 310 CMR 40.0030. Any Bill of Lading accompanying such waste **must bear the seal and signature of a Licensed Site Professional (LSP).**

NECESSARY RESPONSE ACTIONS AND APPLICABLE DEADLINES

Please be advised that April 26, 2004 is considered to be the date of release notification. Unless otherwise stated, this date will be the baseline for calculating compliance with deadlines contained within the MCP.

The MCP requires responsible parties and any other person undertaking response actions at a disposal site to perform Immediate Response Actions in response to sudden releases, Imminent Hazards and Conditions of Substantial Release Migration. Such persons must continue to evaluate the need for Immediate Response Actions and notify the Department immediately if such a need exists.

As an integral part of the response action(s) for this release, you must also comply with the following:

1. Submit a completed *Release Notification & Retraction Form* to the Department in accordance with 310 CMR 40.0300 (i.e., within **60 days** of the date of release notification).
2. Submit an IRA Plan (310 CMR 40.0420), or IRA Completion Statement (310 CMR 40.0427), or a Response Action Outcome Statement (310 CMR 40.1000) whichever is applicable to the Department within **60 days** of the date of the release notification or the date of service of this Notice, whichever comes first.

No disposal site will be deemed to have had all the necessary and required response actions taken for it unless and until all substantial hazards presented by the release and/or threat of release have been eliminated and a level of no significant risk exists or has been achieved in compliance with M.G.L. c. 21E and the MCP.

A fee of \$1,200.00 is assessed if an RAO is filed 120 days after release notification, but before Tier Classification. Therefore, if all remediation work has been completed, you are encouraged to have the RAO submitted promptly to avoid the fee.

Unless otherwise provided by the Department, responsible parties have one year from the initial date notice of a release or threat of release is provided to the Department pursuant to 310 CMR 40.0300 or from the date the Department issues a Notice of Responsibility, whichever occurs earlier, to file with the Department one of the following submittals: (1) a completed Tier Classification Submittal; or (2) a Response Action Outcome Statement. If required by the MCP, a completed Tier I Permit Application must also accompany a Tier Classification Submittal. The deadline for these submittals for this disposal site is **April 26, 2005**.

PROCEDURES TO FOLLOW TO UNDERTAKE RESPONSE ACTIONS

The Department encourages parties having liability under M.G.L. c. 21E to take prompt action in response to releases and threats of release of oil and hazardous materials. By taking prompt action, liable parties may significantly lower cleanup costs and avoid the imposition of, or reduce the amount of, certain permit and/or annual compliance assurance fees payable under 310 CMR 4.00 (e.g., no annual compliance assurance fee is due for Response Action Outcome Statements submitted to the Department within 120 days of the initial date of release notification).

You must employ or engage an LSP to manage, supervise, or actually perform all response actions which you intend to undertake at this disposal site. You may obtain a list of the names and addresses of LSPs by visiting www.mass.gov/lsp, by contacting the Board of Registration of Hazardous Waste Site Cleanup Professionals by telephone at (617) 556-1091, or in person or by mail at One Winter Street, 10th Floor, Boston, Massachusetts 02108.

If you have any questions, please contact this office at the letterhead address or at (508) 792-7653. The Department requests that you inform your LSP of this Notice. All future correspondence communications regarding the disposal site should reference RTN: **2-15225**.

Sincerely,



Nicholas J. Child
Branch Chief, Emergency Response
Bureau of Waste Site Cleanup

5/27/04

NJC/kwd
[NOR/ISSUED-ER]
Enclosures

cc: Northbridge Fire Department
Kenneth Snow, LSP; Pease, Snow & Associates, Inc.; 12 Graystone Way,
Southborough, MA 01772
Database Entry

SUMMARY OF LIABILITY UNDER CHAPTER 21E

As stated in the Notice of Responsibility accompanying this Summary, the Department has reason to believe that you are a Potentially Responsible Party ("PRP") with potential liability under M.G.L. c. 21E, Section 5, for response action costs and damages to natural resources caused by the release and/or threat of release. The Department has identified you as a PRP because it believes you fall within one or more of the following categories of persons made potentially liable by Subsection 5(a):

- any current owner or operator of a site from or at which there is or has been a release or threat of release of oil and/or hazardous material;
- any person who owned or operated a site at the time hazardous material was stored or disposed of;
- any person who arranged for the transport, disposal, storage or treatment of hazardous material to or at a site;
- any person who transported hazardous material to a transport, disposal, storage or treatment site from which there is or has been a release or threat of release of such material; and
- any person who otherwise caused or is legally responsible for a release or threat of release of oil or hazardous material at a site.

For purposes of the MCP, you are considered a Responsible Party ("RP") with actual liability under Chapter 21E if you fall within one of these categories unless you (1) are entitled to a defense under Section 5 or other applicable law, and (2) have reasonably incurred cleanup costs in an amount equal to or greater than any applicable cap on liability under Subsection 5(d).

This liability is "strict," meaning it is not based on fault, but solely on your status as an owner, operator, generator, transporter or disposer. It is also joint and several, meaning that each person who falls within one of these categories may be held liable for all response action costs incurred at the site, regardless of the existence of any other liable parties.

Section 5 provides a few narrowly drawn defenses to liability, including a defense for releases and damages caused by an act of God, an act of war or an act by a third party other than an employee, agent or person with whom the party has a contractual relationship (*see* Subsection 5(c)); a defense for certain owners of residential property at which the owner maintains a permanent residence (*see* Subsection 5(h)); and a defense for certain public utilities and agencies of the Commonwealth which own a right-of-way that is a site (*see* Subsection 5(j)).

You may voluntarily undertake response actions under the MCP without having your liability under Chapter 21E formally adjudicated by the Department. If you do not take the necessary response actions, or fail to perform them in an appropriate and timely manner, the Department is authorized by Chapter 21E to perform the necessary work.

By taking the necessary response actions, you can avoid liability for response action costs incurred by the Department in performing these actions. If you are a RP and you fail to perform necessary response actions at the site, you may be held liable for up to three (3) times all response action costs incurred by the Department and sanctions may be imposed on you for failure to perform response actions required by the MCP.

Response action costs include, without limitation, the cost of direct hours spent by Department employees arranging for response actions or overseeing work performed by persons other than the Department or its contractors, expenses incurred by the Department in support of those direct hours, and payments to the Department's contractors (for more detail on cost liability, *see* 310 CMR 40.1200: Cost Recovery). The Department may also assess interest on costs incurred at the rate of twelve percent (12%), compounded annually.

Any liability to the Commonwealth under Chapter 21E constitutes a debt to the Commonwealth. To secure payment of this debt, the Department may place liens on all of your property in the Commonwealth under M.G.L. c. 21E, Section 13. To recover this debt, the Commonwealth may foreclose on these liens or the Attorney General may bring legal action against you.

In addition to your potential liability for response action costs and damages to natural resources caused by the release, civil and criminal liability may also be imposed by a court of competent jurisdiction under M.G.L. c. 21E, Section 11, and civil administrative penalties may be assessed by the Department under M.G.L. c. 21A, Section 16, for each violation of Chapter 21E, the MCP or any order, permit or approval issued thereunder.

If you are an RP and you have reason to believe that your performance of the necessary response actions is beyond your technical, financial or legal ability, you should promptly notify the Department in writing of your inability in accordance with Chapter 21E, Subsection 5(e), and 310 CMR 40.0172. If you assert and demonstrate in compliance therewith that performing or paying for such response action is beyond your ability, Subsection 5(e) provides you with a limited defense to an action by the Commonwealth for recovery of two to three times the Department's response action costs and 310 CMR 40.0172 provides you with a limited defense to the Department's assessment of civil administrative penalties.